IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2347 of 2005
Date of Decision: 7.11.2006

S.D.O. U.H.B.V.N. and another ...Petitioners

Versus

Dinesh Kumar ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sameer Rathaur, Advocate, for
Shri Sumeet Goel, Advocate, for the petitioner.
Shri Harkesh Manuja, Advocate, for the respondent.

JUDGMENT

The defendants are in revision petition aggrieved against the order passed by the learned first Appellate Court on 12.2.2005, whereby delay of 62 days in filing of appeal was not condoned and consequently, the application as also the appeal, were dismissed.

The plaintiff-respondent filed a suit for declaration and consequential relief of permanent and mandatory injunctions on the ground that he has obtained electric connection and has been paying the electricity bills regularly. On 13.3.2001, the employees of the defendants visited the site of the plaintiff and reported the theft of electricity. On the said basis, a demand of Rs.73282/- was raised, which was deposited by the plaintiff under protest. The suit was filed to seek refund of the said amount. The said suit was partly decreed by the learned trial Court. Aggrieved against the same, the petitioners preferred an appeal before the learned first Appellate Court along with an application seeking condonation of delay in filing the appeal.

In the application for condonation of delay, it was the case of the petitioners that the delay of 62 days in filing the appeal is neither intentional nor mala-fide. The petitioners have sought permission from their Legal Remembrancer and the higher authorities and, therefore, delay in filing the appeal was sought to be condoned. The learned first Appellate Court found that no sufficient cause for condonation of delay is made out.

Keeping in view the facts and circumstances of the case and the judgment of the Hon'ble Supreme Court in **N. Balakrishnan Vs. Krishnamurthy, AIR 1998 SC 3222**, wherein it has been held that negligence in filing appeal cannot be equated as lack of sufficient cause. At best it can be said that the petitioners were negligent in not prosecuting the appeal with diligence as may be expected but I do not find that there was any intentional delay or lack of bona-fide on the part of the petitioners in not filing the appeal within time.

Consequently, the impugned order dated 12.2.2005 is set aside. The delay in filing the appeal is condoned. The learned first Appellate Court is directed to hear the appeal on merits, in accordance with law.

Parties through their counsel are directed to appear before the learned first Appellate Court on 8.12.2006.

07-11-2006 (HEMANT GUPTA)
ds JUDGE